

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Delawrence Ashford, #299544,)	
)	C/A No.: 8:05-0529-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
Alvin S. Glenn Detention Center; and)	
Prison Health Services Incorporated,)	
)	
Defendants.)	
)	

Plaintiff Delawrence Ashford, proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983. At the time of the underlying events, Plaintiff was detained at the Alvin S. Glenn Detention Center. Plaintiff asserts that he was injured when a basketball goal, backboard, and pole separated from a wall and struck him on the head during a recreational period at the detention center. Plaintiff further alleges that he did not receive adequate medical care for his injuries.

This matter is before the court on Defendant Prison Health Services, Inc.'s motion for summary judgment filed May 26, 2005. By order filed May 27, 2005, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response to Defendant's motion on July 5, 2005.

In accordance with 28 U.S.C. § 636(b), this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. On January 23, 2006, the Magistrate Judge filed a Report of Magistrate Judge in which she recommended that Defendant Prison Health Services, Inc.'s motion for summary judgment be granted as to Plaintiff's state law claims, and that Plaintiff's state law claims, of whatever kind, against either Defendant be dismissed without prejudice. Plaintiff has filed no response to the Report of Magistrate Judge.

On February 7, 2006, the Clerk of Court mailed a copy of a Notice of Privacy Rights (Warning to Pro Se Litigants) to Plaintiff at his last known address at Manning Correctional Institution, 502 Beckman Drive, Columbia, South Carolina 29203. The envelope containing the order was returned to the Clerk of Court on December 12, 2005, marked "NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD" and "RELEASED." The court reviewed the file and discovered that Plaintiff's last submission listed as his current address "Lee Correctional Institution, 900 Wiscaky Highway, Bishopville, South Carolina 29010." The court directed the Clerk's Office to forward copies of the Notice of Privacy Rights and Report of Magistrate Judge to Plaintiff at Lee Correctional Institution. The Clerk's Office mailed the appropriate documents to Plaintiff on February 21, 2006. On March 10, 2006, the envelope that had been addressed to Plaintiff at Lee Correctional Institution was returned to the Clerk's Office marked "NO LONGER AT THIS ADDRESS. RETURN TO SENDER. RELEASED 2/1/06."

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Plaintiff was advised by order filed March 15, 2005 of his responsibility to notify the court *in writing* if his address changed. Plaintiff was informed that his case could be dismissed for failing to comply with the court's order. It appears that Plaintiff no longer wishes to pursue this action.

Under these circumstances, the court declines to adopt the Report of Magistrate Judge. The court concludes that the within action should be dismissed pursuant to Rule 41(b) *with prejudice*.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

March 17, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.